

REMARKS

The final Office Action of September 12, 2008 has been reviewed and the comments therein carefully considered. The claims at issue in this application have now been amended in an effort to overcome the outstanding rejections. Specifically, claims 9 and 15 have been amended to define a label with a non-foam layer laminated onto an outer side thereof. Support for this amendment can be found in, for example, the paragraph beginning on line 6 of page 7 of the specification as filed as well as in FIG. 2. In addition, claims 17 and 18 have been added by this amendment. Support for these claims can be found on page 15, lines 2-10 and page 10, line 18 through page 11, line 11 respectively. Thus, no new matter has been added by this amendment. Claims 12-14, and 16 have been cancelled. Accordingly, claims 9-11, 15, and 17-18 are now pending, of which claims 9 and 15 are in independent form.

Claims 9-10 and 15 were rejected under 35 U.S.C. §102(b) for anticipation by U.S. Patent No. 3,677,874 to Sterrett et al. (hereinafter “the Sterrett patent”). In view of the amendments to claims 9 and 15, Applicant submits that claims 9-10 and 15 define over the Sterrett patent and thus this rejection should be reconsidered and withdrawn.

The Sterrett patent is directed to an insulation product composed of a foamed polystyrene laminate layer (12) laminated onto a lower density, foamed polystyrene core board (11). The laminate foam film can be embossed.

Claims 9 and 15, as amended, are directed to a label comprising a foam sheet having an expanded foam layer. The outer side of the label is laminated with a non-foam layer and has linear depressions or protrusions formed thereon by pressing the foam sheet. The linear depressions or protrusions provide an uneven outer surface of the label. Claim 10 depends from claim 9 and further provides a heat sensitive adhesive layer on the inner side of the label.

The Sterrett patent does not disclose or suggest an article having an expanded foam layer in which an outer side of the layer is laminated with a non-foam layer. Instead, both the polystyrene board (11) and the polystyrene laminate layer (12) are foamed (the Sterrett patent, col. 1, lines 42-47). Thus, the Sterrett patent fails to teach each limitation of the pending claims and consequently fails to anticipate the claims.

Moreover, claims 9-10 and 15 would not be obvious in view of the Sterrett patent because the Sterrett patent provides no motivation or other rationale for modifying the article therein to create the claimed label. Some of the advantages of Applicant's invention are that the non-foam layer protects the foam layer from scratches and that the non-foam layer is easier to print on (present specification page 8, lines 15-17). The Sterrett patent is directed to insulating boards useful for roofing applications rather than container labels. Thus, the Sterrett patent is not concerned with protecting the core foam layer from scratches, nor is the Sterrett patent concerned with improving the ease and accuracy with which designs can be printed on the outer surface of the foamed laminate layer. Instead, the Sterrett patent is concerned with improved heat capacity, and the Sterrett patent makes it clear that such is accomplished with the use of a foamed laminate layer. One skilled in the art, reading the Sterrett patent, would not find it obvious to construct a label comprising a foam sheet having an expanded foam layer in which an outer side of the label is laminated with a non-foam layer. Thus, the Sterrett patent does not render obvious the invention of claims 9-10 and 15.

Claim 16 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,917,217 to Sisson. Because claim 16 has been cancelled, this rejection is now moot.

Claim 11 stands rejected under 35 U.S.C. §103(a) for obviousness over the Sterrett patent in view of U.S. Patent No. 5,226,585 to Varano (hereinafter "the Varano patent"). Claim 11 further defines the label of claim 9 by reciting that the linear depressions formed on the outer side of the label each have a width of 0.5 mm to 3.0 mm. The Examiner contends that the Sterrett patent substantially discloses the claimed subject matter of claim 11 with the exception of the particular width of the linear depressions. The Varano patent is said to suggest a label having linear depressions where the width of the linear depressions is approximately 0.030 in. (0.76 mm).

However, as previously indicated, claim 9, from which claim 11 depends, has been amended to recite a label comprising a foam sheet having an expanded foam layer as well as, on the outer side of the label, a non-foam layer. As described above, the Sterrett patent is limited to an article in which both the polystyrene board (11) and the polystyrene laminate layer (12) are foamed. The Sterrett patent does not disclose, teach, or suggest an article comprising a foam sheet having an expanded foam layer in which an outer side is

laminated with a non-foam layer. The Verano patent does not cure this deficiency of the Sterrett patent. The wrap (14, 28) of the Verano patent, which is said to be a "label," is formed from biodegradable material such as recycled paper (the Verano patent, col. 3, lines 6-9). There is no discussion of a wrap composed of multiple layers, much less a wrap having an expanded foam layer and a non-foam layer on the outer side thereof.

Because the Sterrett patent and the Verano patent, in combination, fail to disclose or render obvious the label recited in claim 11, the outstanding rejection of claim 11 under 35 U.S.C. §103(a) should be withdrawn.

Claims 12-14 stand rejected under 35 U.S.C. §103(a) for obviousness over the Sterrett patent in view of U.S. Patent No. 4,556,527 to Sarcander. Since each of claims 12-14 has been cancelled, this rejection is considered moot.

Claim 17, which depends from claim 9, further defines the label of claim 9 as being heat shrinkable. As explained by Applicant on page 15 of the specification as filed, composing the label out of a heat-shrinkable material provides an alternative means of attaching the label to a container body. In particular, the label can be positioned around the container and then a heating source can be applied, allowing the label to contract and fit snuggly against the container. Such a label can serve as an alternative or supplement to the more traditional step of bonding the label to the container body.

Claim 18, which depends from claim 10, further defines the label by providing at least one of a printing layer and an overcoat layer disposed on the outer side of the label. The printing and overcoat layers can be created using UV curing ink or electron curing ink. When UV curing ink is used as the printing ink, the ink is less likely to be damaged upon the application of heat to the heat sensitive layer since the UV curing ink has excellent heat resistance.

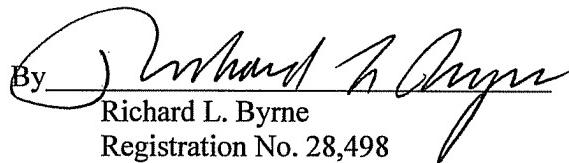
Each of claims 17 and 18 defines a label having features not found in the articles taught in the cited documents of record. Moreover, claims 17 and 18 depend from claims 9 and 10, respectively, which, as discussed above, are patentable over the Sterrett patent and the Verano patent, whether viewed alone or in combination. Thus, a favorable determination of the patentability of claims 17 and 18 is respectfully requested.

Application No. 10/533,220
Paper Dated: January 12, 2009
Attorney Docket No. 4605-051180

CONCLUSION

For all of the foregoing reasons, Applicant submits that the pending claims are patentable over the cited documents of record and are in condition for allowance. Accordingly, reconsideration of the outstanding rejections and allowance of pending claims 9-11, 15, and 17-18 are respectfully requested.

Respectfully submitted,
THE WEBB LAW FIRM

By 
Richard L. Byrne
Registration No. 28,498
Attorney for Applicant
436 Seventh Avenue
700 Koppers Building
Pittsburgh, PA 15219
Telephone: (412) 471-8815
Facsimile: (412) 471-4094
E-mail: webblaw@webblaw.com